No. 79-1571, No. 79-1524, No. 79-1719 and No.

Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-1571

CHRISTOPHER McGRATH, JR.,

Petitioner,

v.

STEVEN JOHN SLOTKIN, an infant by his mother and natural guardian, CHARLOTTE SLOTKIN, and CHARLOTTE SLOTKIN, as Executrix of the Estate of BERT SLOTKIN, deceased,

Respondents.

On Petitions for Writs of Certiorari to the United States Court of Appeals for the Second Circuit

(Additional titles appear on reverse side of this cover)

RESPONSE OF GEORGE BERKOWITZ TO THE ABOVE TITLED PETITIONS FOR WRITS OF CERTIORARI

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TABLE OF CONTENTS

	PAGE
STATEMENT	2
POINT—Should the Court grant certiorari, its review should exclude from consideration the dismissal of the complaint against Berkowitz	3
CONCLUSION	4

Cases Cited

Connecticut Railway & Light Co. v. Palmer, 305 U.S. 493	3
General Talk Pictures Corp. v. Western Electric Co., 304 U.S. 175	3

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No. 79-1524

CITIZENS CASUALTY COMPANY OF NEW YORK,

Petitioner,

v.

STEVEN JOHN SLOTKIN, etc.,

Respondents.

No. 79-1719

AMERICAN MUTUAL INSURANCE COMPANY OF BOSTON,

Petitioner,

v.

STEVEN JOHN SLOTKIN, etc.,

Respondents.

No.

JOHN McGRATH,

Petitioner,

v.

STEVEN JOHN SLOTKIN, etc.,

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On Petitions for Writs of Certiorari to the United States Court of Appeals for the Second Circuit

RESPONSE OF GEORGE BERKOWITZ TO THE ABOVE TITLED PETITIONS FOR WRITS OF CERTIORARI

Statement

This is submitted on behalf of George Berkowitz in connection with the above titled Petitions for Writs of Certiorari. Mr. Berkowitz was a defendant and defendant-respondent in the courts below.

POINT

Should the Court grant certiorari, its review should exclude from consideration the dismissal of the complaint against Berkowitz.

The United States Court of Appeals for the Second Circuit unanimously affirmed the District Court's dismissal of the complaint against Berkowitz although it reversed that Court's dismissal of the complaint against all other defendants. Thus with regard to Berkowitz, the District Court and the Court of Appeals were in concurrence.

This Court has held that concurrent findings should "not be disturbed unless plainly without support". *General Talk Pictures Corp.* v. *Western Electric Co.,* 304 U.S. 175, 178.

None of the petitions names Berkowitz as a respondent. None requests a review of the dismissal of the complaint against Berkowitz. None expresses itself aggrieved by the dismissal of the complaint against Berkowitz. It is this Court's stated policy "to review only the matter which this Court was advised aggrieved petitioner." *Connecticut Railway & Light Co.* v. *Palmer,* 305 U.S. 493, 497. Accordingly, we respectfully suggest, that the dismissal of the complaint against Berkowitz is not a matter for this Court's review.

The affirmance of the dismissal of the complaint against Berkowitz was not grounded on any constitutional question. Rather, the Court of Appeals' affirmance of the dismissal of the complaint against Berkowitz resulted solely from its finding of fact that there was insufficient evidence to sustain the charge of fraud alleged against him.

CONCLUSION

The dismissal of the complaint against Berkowitz should not fall within the ambit of any review that this Court may grant of the judgment and opinion of the Court of Appeals for the Second Circuit.

Respectfully submitted,

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